City of Chicago
COMMISSION ON HUMAN RELATIONS
510 N. Peshtigo Court, 6th Floor
Chicago, IL 60611

IN THE MATTER OF	)	
	)	
Margie C. Figueroa	)	
Complainant,	)	
	)	
and	)	Case No. 97-H-5
	)	
Richard Fell	)	
Respondent.	)	

FINAL RULING ON LIABILITY AND DAMAGES

I. Introduction

On January 6, 1997, Complainant Margie Figueroa ("Mrs. Figueroa") filed a Complaint against Respondent Richard Fell ("Mr. Fell") with the City of Chicago Commission on Human Relations ("Commission"). The Complaint alleged that Respondent, her landlord at the time, discriminated against her due to her ancestry (Hispanic) and sex (female) in violation of Section 5-8-030 of the Chicago Municipal Code. At the conclusion of its investigation, the Commission found substantial evidence to support the charge of discrimination on the basis of ancestry but dismissed the allegations with respect to discrimination on the basis of sex.

After various discovery and other pre-hearing motions, discussed more fully below, the Administrative Hearing on the charge of ancestry-based discrimination was held on December 4 and 5, 1997 and January 29, 1998. Both parties were represented by counsel. The Hearing Officer's First Recommended Decision on Liability and Damages was issued on July 15, 1998. Respondent filed his Objections to First Recommended Decision ("Objections"), and Complainant filed a response to those objections. Those Objections and the response have been fully

considered.[1] The Hearing Officer issued her Final Recommended Decision on September 14, 1998.

Based on the complete record, including the parties' Post-Hearing Briefs, their responses to the First Recommended Decision, and the Hearing Officer's Final Recommendation, the Commission makes the following Findings of Fact and Conclusions of Law:

II. Findings of Fact

1. Complainant Margie C. Figueroa is a Hispanic female of Puerto Rican ancestry. She was born and raised in Chicago. She lived in the first-floor west apartment at 4020 West Patterson, in Chicago, Illinois, from September 1995, until March 31, 1997, with her husband James (Jim) and her daughter Jamie. (Tr. 49-51, 83-4)

2. At all times relevant, Respondent Richard Fell was the owner of the building at 4020 West Patterson, a four-unit residential apartment building. Respondent, who is Caucasian, is in the business of owning and managing real property. (Tr. 458, 461, 524)

3. At the time Respondent rented the Figueroas the apartment, he was aware that Complainant was Hispanic and in particular that she was Puerto Rican. There were no other Hispanic tenants in the building at 4020 West Patterson at that time. (Tr. 96, 520, 524-5)

4. Before moving into the apartment, the Figueroas inspected the apartment. Complainant

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[1] In his Objections, Respondent failed to include citations to the record to support many of his (frequently inaccurate) characterizations, summarizations or quotations of that record. This violates the Commission's Regulation 240.160. While this might be excused without comment if Respondent were appearing pro se, it is poor practice for counsel, and further undermines the persuasiveness of Respondent's assertions. Respondent also failed to identify by paragraph number any Finding of Fact or Conclusion of Law to which he objected, which although not required by the Regulations would have simplified the Commission's consideration of his concerns.

noticed that the radiator in the dining room was disconnected. She pointed that out to Respondent who agreed to reconnect that radiator. However, the radiator was not connected when the Figueroas moved in. There was also a gap between the wall and the floor that Respondent did not repair. (Tr. 52-3, 110, 521-22)

5. During the winter of 1995-96, the Figueroas suffered from lack of heat in the apartment. Complainant complained repeatedly to Respondent about the lack of heat, but the problem was not corrected. As a result, the Figueroas purchased two electric space heaters and put blankets over the windows to warm the apartment. Mr. Figueroa also bought caulking and caulked the gap between the floor and the wall. Despite the heating problems, the Figueroas did not move because the apartment was convenient to Jamie Figueroa's school and friends, and because Complainant believed Respondent's promises to correct the problem. (Tr. 49-50, 53-6, 99, 101, 114, 126-7, 194)[2]

6. The Figueroas did not receive adequate heat during the following winter. On October 31, 1996, Complainant called Respondent to complain about the lack of heat in the apartment. Respondent commented to her, "Goddamn it, you're the only one that complains about the heat." At that time, the dining room radiator remained disconnected. (Tr. 56-8, 99, 101-2)

7. Complainant finally called the Chicago Department of Buildings and complained about the heat. An inspector came to her apartment on December 4, 1996, took temperature readings and made a report, finding that the dining room radiator was inoperable and that the temperature in the dining room was 55° F. The City Building Inspector inspected the Figueroas' apartment

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[2] Respondent testified that he never received any complaints from Complainant about the lack of heat in the apartment prior to November or December 1997. (Tr. 473, 487) As discussed more fully below at page 12, Respondent is not credible on this point. See Paragraph 6 of Respondent's Verified Response (C. Exh. 13), a copy of which, with Respondent's notarized signature, is on file in the Commission file on this matter. See also C. Exh. 15, ¶ 6.

again on December 26, 1996, and found the temperature to be 58° F, again noting not only that the "common plant" was providing inadequate heat, but also that the dining room radiator was "nonfunctional." A third inspection was conducted on January 12, 1997, and again there was insufficient heat in the apartment. The temperature recorded by the inspector for the Figueroas' living room that day was 62° F. The temperature recorded for the living room in the other apartment on the same floor as the Figueroas' was 65° F. As a result of these inspections, Respondent was fined by the City of Chicago for providing insufficient heat in the apartment.[3] (Tr. 59-61, 574-6; Complainant's Exhibits ("C. Exhs.") 2, 8 and 9, Respondent's Exhibit ("R. Exh.") 2)[4] At the Hearing, Respondent admitted that he was found to have committed three "heating violations" and that there was a "heating problem" in the unit. (Tr. 591, 594-5)

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[3] Chicago city ordinance requires that a landlord provide sufficient heat to maintain the following minimum temperatures in a residential unit between September 15 and June 1: 68° F. between 8:30 a.m. and 10:30 p.m.; 65° F. between 7:30 a.m. and 8:30 a.m.; and 63° F. between 10:30 p.m. and 7:30 p.m. See C. Exh. 3.

[4] Respondent objected to the admission of Complainant's Exhibit 8, an internal inspection report entitled "Heat Complaint Notice" and computer-generated status report that the Complainant obtained from the City's Department of Building Inspection (or Inspectional Services) on the ground that it was not properly authenticated so as to fall within an exception to the hearsay rule for public documents, citing 110 ILCS ¶8-1203. (Tr. 340 - 351.) The Hearing Officer reserved her ruling, in order to review the statute cited and the arguments made. After due consideration, however, the exhibit is admitted. As noted at the Hearing, the Commission is not required to apply State rules of evidence strictly in its hearings. Reg. 240.314. More important, Respondent did not object to the similar documents admitted as Complainant's Exhibit 4 and his own Respondent's Exhibit 2. He has thereby waived the objections to Complainant's Exhibit 8. It would be manifestly unjust for Respondent to be able to pick and choose among similar documents, ignoring the alleged infirmity in the reports that he proffered while insisting that those same infirmity bar a similar report offered by Complainant. In addition, Complainant's testimony as to the source of that document (Tr. 367-8) provides sufficient guarantee of the report's authenticity as a duly made and maintained record of the Building Inspection Department for the purposes of the Commission. However, Complainant withdrew a document identified as Complainant's Exhibit 9, which appeared to be a narrative report by a building inspector of a fourth inspection, conducted on January 18, 1997 at 1:00 a.m., when temperatures in the dining room, center bedroom, kitchen and bathroom were found to be 59° F, and in the living room 62° F. That report has not been considered in reaching this decision.

8. Sometime after the first City inspection, Respondent called Complainant and asked, "Why did you call the fucking city?" Complainant answered that she called because she had no heat. (Tr. 70-1)

9. Sometime October 31, 1996, Complainant also called a tenants' rights organization and learned for the first time that she had a right to withhold rent if there was insufficient heat in her apartment. She told Respondent that they were withholding their rent because of the lack of heat. She then sent Respondent a letter on January 6, 1997, notifying him again that she had had insufficient heat since October 1996, requesting correction of the problem and advising him of her rights under Section 5-12-100(f) of the Chicago Residential Landlord-Tenant Ordinance. The notice also listed her address and her telephone number where she could be contacted. With that notice, she sent a letter listing additional problems in the apartment: falling bathroom wall tiles; buckling of the bathroom and hallway ceiling; and holes behind and under the dining room radiator. Throughout the winter of 1996-1997, Complainant called Respondent repeatedly, frequently and persistently to complain about the lack of heat.[5] The heating problem continued in January and February 1997. (Tr. 62, 69, 102, 283; C. Exh. 3; R. Exh. 2)

10. Following the Figueroas' notice that they were withholding rent, Respondent began visiting the apartment, demanding rent. On one such visit in December 1996, Respondent banged on the door loudly and demanded the rent, but the Figueroas did not let him into the apartment. On another occasion in December 1996, Respondent came to her apartment and banged on her

[5] Respondent's attorney made much of the fact that the letter listing the other problems requiring repair did not mention any heating problem, badgering Complainant and suggesting that she never sent Complainant's Exhibit 3. (Tr. 104-6) However, Complainant testified credibly that she sent the notice of insufficient heat and intent to withhold rent together with the other form letter. (Tr. 64-5; C. Exh.3) It is significant that when he finally testified, Respondent never denied that he received Complainant's written notice of inadequate heat.

door, but she would not let him in. On a third occasion, when her daughter and niece were with her, Respondent yelled and flailed his arms at Complainant in a threatening manner. He called the Figueroas "fucking Mexicans" and told her to "go live with the rats and roaches." (Tr. 70-77, 135) He repeatedly called the Figueroas "fucking Mexicans" or "fucking Puerto Ricans." These slurs began when the Figueroas told him they would withhold rent because of the heat. (Tr. 78-9, 128)[6]

11. Tina Ocasio, Complainant's 13-year-old niece, was present on several of these occasions. During December 1996 and January 1997, when Ocasio was living with the Figueroas, Respondent came to the Figueroas' apartment several times. When he did so, he would yell and call Complainant "bad names," according to Ocasio. On one visit in December 1996, Complainant admitted Respondent to the apartment, in the presence of Ocasio and Jamie Figueroa; Respondent yelled, called Complainant a "bitch," and raised his arms as if he were going to hit Complainant. (Tr. 207-213.) On the occasion when Respondent yelled at Complainant in the presence of Ocasio and Jamie Figueroa, he stated, "Why don't you go live with the Mexicans and [sic] by Humboldt Park with the rats and the roaches?" Ocasio was afraid on this occasion that Respondent would hit her aunt. (Tr. 215-219)[7]

12. On December 6, 1996, two days after the first City inspection, Respondent came to the Figueroas' apartment in the evening. He came in the evening because of the Figueroas' insistence that he enter the apartment only when Mr. Figueroa was present. He came with Joe

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[6] Respondent objects that the record does not support this Finding of Fact. However, Complainant's testimony to this effect at Tr. 70 - 79 and 128 was clear, credible and consistent.

[7] As discussed more fully below at pages [13 - 16,] Respondent's denials that he was ever in the Figueroas' apartment with Ocasio, that he ever raised his fists to Complainant, or said "fucking Mexicans," or called her a name or threatened her in front of anybody (see Tr. 481, 483-4), are not credible.

Romic, a neighbor who occasionally did repair work for him, to repair the radiator and an electric switch. In the course of that visit, Mr. Figueroa told Respondent that if Respondent were 20 years younger, "he would take good care of [Respondent]." Romic reattached the radiator, and thought it was working when he left. Once the radiator was reattached, Complainant paid the November 1996 rent. (Tr. 132-4, 148, 439-440, 482)

13. In December 1996, Respondent also taped a note to the front door of the Figueroas' apartment. The note states: "Why did you rent the apartment if you cannot afford the rent? Rents are cheaper in Humbolt [sic] Park." (Tr. 79-81; 466; C. Exh. 4)

14. Respondent testified that this was not a racial comment, and merely a statement based on his knowledge that Humboldt Park rents are cheaper than in the neighborhood of the Figueroas' apartment. (Tr.495)

15. Complainant testified that Humboldt Park is commonly considered a Hispanic neighborhood, and that its Hispanic population is predominately Puerto Rican. (Tr. 83-4) This is consistent with the 1990 U.S. census population figures, which show that at that time, the neighborhood known as Humboldt Park was 44 percent Latino overall; 17.1 percent Mexican and 22.7 percent Puerto Rican. Overall, only 19.6 percent of Chicago's population at that time was Latino, and only 4.3 percent of the City population was Puerto Rican. (Tr. 361, 363)

16. Complainant understood Respondent's note to be telling her "that I couldn't live in that area, that I couldn't live in that apartment, and that I should go live with people like myself, which are Puerto Rican people." (Tr. 85)

17. Respondent called Jacobs Boiler Company to fix the heating system after the City inspection. Jacobs serviceman Richard Wilk made some repairs to the boiler on December 30, 1996, and replaced parts on four radiators in the Figueroa apartment. (Tr.393, 395-6, 400)

18. Respondent continued to insult and threaten Complainant in January 1997, calling the Figueroas "fucking Puerto Ricans" and telling Complainant that "he was going to kick our ass." (Tr. 284-291 *passim*)

19. As early as December 1996, Complainant told Respondent to come to the apartment only when her husband was there. (Tr. 131, 143, 434). On at least one occasion, in January 1997, Complainant called the police because she felt threatened by Respondent, who had banged on her door and was running up and down the stairs calling her a "son of a bitch." (Tr. 135, 136, 141.)

20. Respondent has owned rental property in Humboldt Part for forty years and is familiar with that neighborhood. The tenants of his property in Humboldt Park are primarily Hispanic, and he is aware of one part of Humboldt Part that is, he testified, "90 percent Hispanic." (Tr. 460-2, 550-56)

21. Respondent filed an eviction notice against the Figueroas on December 27, 1996. As a result of Respondent's eviction action, the parties entered into a mediated agreement by which Respondent would make various repairs, including solving the heating problem, and the Figueroas would pay rent once the repairs were completed. In addition, as part of that agreement, the Figueroas and Respondent were to deal with each other only through Joe Romic, and Complainant was authorized to deal directly with Jacobs Boiler over problems with the heat in her apartment. Jacobs Boiler serviceman Wilk returned to the Figueroa apartment on January 27, 1997, but Complainant would not let him into the apartment because he was with Respondent. Although the Forcible Detainer Court order originally required the Figueroas to pay Respondent the full amount of back rent due, Complainant subsequently obtained counsel and the amount due was reduced to reflect the periods of inadequate heat. (Tr. 407, C. Exh. 6, 7, R. Exh. 3)

22. The Figueroas moved out in March 1997. At the time, they still did not have adequate heat, despite various repairs made by Joe Romic and Jacobs Boiler. The Figueroas never paid the rent due under the final court order. Mr. Figueroa told Romic, when he did the work called for in the mediation agreement, that they would not pay until the building was re-inspected by the City Building Inspector. (Tr. 97, 125, 245, 446)

23. Respondent's treatment of Complainant upset her very much. It made her "feel like dirt, . . . like [she was] a second-class citizen, like [she] was worthless, and because [she] was Puerto Rican that [she] had to live where there are rats and roaches." Her anxiety began when she complained to Respondent about the heat on October 31, 1996. She became anxious because he would not give them heat and was threatening to kick them out. She was also upset by her daughter's reaction to Respondent's threats: her daughter began having nightmares, and was afraid that Respondent was going to throw her toys out because of his threats to kick them out. At some point, her daughter began bed-wetting and Complainant and her husband began sleeping in the dining room because she had to get up at night to change her daughter's bedclothes. She and her husband argued because of the effect on their daughter and their feeling that there was nothing they could do to stop the harassment. She had trouble sleeping, and "was so nervous and shaking all the time." On January 20, 1997, Complainant saw a physician and was diagnosed as suffering from anxiety. She began taking medication for anxiety at this time and was still taking it at the time of the Hearing. (Tr. 77-78, 86, 88-91, 93, 95, 120-2, 319; C. Exh. 5)

III. Conclusions of Law

1. The Chicago Fair Housing Ordinance ("CFHO") provides, at Section 5-8-030 of the Chicago Municipal Code:

It shall be an unfair housing practice and unlawful for any owner . . . having the right to sell, rent, lease or sublease any housing accommodation, within the city of Chicago, . . .:

A. To make any distinction, discrimination or restriction against any person in the price, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago . . . predicated upon the . . . national origin [or] ancestry . . . of the prospective or actual buyer or tenant thereof.

B. To publish, circulate, issue or display, or cause to be published circulated, issued or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to the sale, rental or leasing of any real property within the city of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon the . . . national origin [or] ancestry . . . of any . . . lessee or renter of such property.

2. Reg. 420.175 of the Commission's Rules and Regulations provides:

a) Harassment on the basis of actual or perceived membership in a Protected Class is a violation of the [Fair Housing Ordinance]. An owner . . . has an affirmative duty to maintain a housing environment free of harassment on the basis of membership in a Protected Class.

b) Slurs and other verbal or physical conduct relating to an individual's membership in a Protected Class constitutes harassment when the conduct: (i) has the purpose or effect of creating an intimidating, hostile or offensive housing environment; (ii) has the purpose or effect of unreasonably interfering with an individual's housing; or (iii) otherwise adversely affects an individual's housing opportunity.

3. Respondent is an "owner" of the building at 4020 West Patterson, within the meaning of the CFHO.

4. Respondent's verbal epithets ("fucking Mexican," "fucking Puerto Rican," "why don't you go live in Humboldt Park with the rats and roaches") and his written note asking why the Figueroas did not rent in Humboldt Park are ethnic slurs that created for Complainant an intimidating, hostile and offensive housing environment and thereby constituted unlawful harassment based on her ancestry.

5. By subjecting Complainant to those verbal and written ethnic slurs, Respondent discriminated against Complainant on the basis of her ancestry and thereby violated Part A of Section 5-8-030 of the Chicago Municipal Code.

6. Although the note that Respondent taped on Complainant's door does express an ethnic slur towards her and her family personally, and is part of the conduct that violated Part A of Section 5-8-030, it is not the type of communication that is barred by Part B of that Section. Part B is intended to regulate communications that relate to the sale, rental or leasing of real property that will indicate or express any limitation or discrimination in the sale, rental or leasing of that real estate. In this case, Respondent's insult was just that – an insult. He did not seek to evict Complainant and her family because of their ancestry, but rather because of their non-payment of rent, and his note to them was not a refusal to rent to them or a threat to evict them because of their national origin. Although Part B is worded broadly so as to extend beyond merely formal advertisements or offers to rent, sell or lease property, it is not worded so broadly as to encompass this personal venom. See Commission Reg. 420.120, "Circulation of Discriminatory Communications." Thus, only Part A of Section 5-8-030 has been violated by Respondent.

7. Complainant has established that she suffered compensable emotional distress as a result of Respondent's unlawful conduct, and that an award of punitive damages against Respondent is also appropriate.

V. Discussion

This case hinges primarily on questions of credibility. Complainant testified, with corroboration by her niece, that Respondent yelled "fucking Puerto Rican" and "fucking Mexican" at her on several occasions and asked angrily why she did not go live in Humboldt Park "with the rats and roaches," in the course of a landlord-tenant dispute over the condition of her family's apartment and their decision to withhold rent. She also asserts that the note that Respondent left

on her door, alluding to the cheaper rents in Humboldt Park, was another ethnic slur and an indication that Respondent wanted to evict her because of her ancestry. Respondent, however, denies ever making the racist remarks, and contends that the reference to Humboldt Park was a non-discriminatory statement of fact about the rents in that area, with no ethnic or racist implications at all.

However, after careful review of the record here, including consideration of the Hearing Officer's account of the respective witnesses' demeanor on the stand and in the Hearing room generally, it is apparent that all material disputes of credibility between Complainant and her niece, on the one hand, and Respondent, on the other, must be resolved in favor of Complainant. One simple but telling example: Although it is more probable than not that Complainant overgeneralized in her testimony that she complained to Respondent "daily" during the winter of 1996 - 1997 about the lack of heat in her apartment, it is apparent that Complainant did complain repeatedly and persistently, both in the winter of 1995 - 1996 and beginning October 31, 1996. Respondent's denials at the Hearing that he had received any complaints about heat prior to the City's notice were particularly incredible, and in fact, he rather weakly attempted to correct this on cross-examination by explaining that in his earlier testimony, he was referring only to not having received prior written complaints. (Tr. 570-2.) However, throughout the Hearing up to the time of his testimony, Respondent heard the word "complaint" used to refer indiscriminately to both oral and written complaints. Respondent's mincing of words in his own testimony demonstrated an intentional effort to mislead the Commission.

A more disturbing example is the question of the conflicts between Respondent's testimony at the Hearing, his written comments to his second attorney (C. Exh. 12)[8], and his admissions in his Verified Response to the Complaint (C. Exh. 13). In his Verified Response, prepared by an attorney who did not represent Respondent at the Hearing, Respondent admitted that "he taped a note as described to the complainant's door." (C. Exh. 13, ¶ 8.) However, in his later note to his current attorney and at the Hearing, Respondent directly contradicted this. (Tr. 525, 536, 537; C. Exh. 12.) When these discrepancies were pointed out to him by Complainant's counsel on cross-examination, Respondent took his cue from his attorney's leading objections (Tr. 537, lines ["ll."]16-17; Tr. 538, ll. 9-19; Tr. 540, ll. 16-24; Tr. 541, ll. 11-13) duly announced that he had never seen the Verified Response and had not even participated with his then-counsel in their preparation. He insisted that the document was not true and that he had no contact with his original attorney, who, he testified, prepared it "on his own violation." (Tr. 539, 544) He claimed to have no knowledge of anything sent by his original attorney to the Commission. (Tr. 540, 542) He announced that the simple question "You yourself did nothing to insure that what [his first attorney] sent to the Commission was true?" (Tr. 541, ll. 17-8) was "a very tricky question," but only after prompting from his attorney. (Tr. 540, ll. 16-24) He announced that Paragraph 8 of the Verified Response was false and denied ever seeing the document prior to the third day of the Hearing. (Tr. 544)

Respondent's testimony about the Verified Response is not simply incredible – it is in fact demonstrably false. Although the copy sent to Complainant and marked as Complainant's Exhibit

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[8] Respondent initially objected during the Hearing that his written notes to his attorney were privileged and should not have been admitted into evidence, but the objection was subsequently withdrawn. (Tr. 530, 533)

13 at the Hearing was unsigned, the original Verified Response in the Commission's file, a document of public record of which the Commission is entitled to take notice, displays Respondent's signature, notarized and dated March 11, 1997. This instance of prevarication and willingness to avoid telling the truth undermines Respondent's credibility, to say the least. It also represents an attitude of gross disrespect for the Commission's procedures to suggest, even falsely, and to expect the Commission to believe, that a businessman like Respondent would allow official documents to be filed by his attorney on his behalf without any care for their accuracy.

Even aside from these problems with his credibility, Respondent never effectively denied Complainant's testimony (Tr. 70 - 79, 148) that he repeatedly called the Figueroas "fucking Mexicans" or "fucking Puerto Ricans." In response to his attorney's leading question on direct, he did deny that he ever said to Complainant, "You fucking Mexicans or fucking Puerto Ricans are all the same," (Tr. 483) but there was never any allegation by Complainant that he said this. He did contradict the testimony of Complainant and her niece Tina Ocasio that he called the Figueroas "fucking Mexicans" or "fucking Puerto Ricans" in Ocasio's presence, but those denials are not credible: Ocasio was a careful, attentive witness who, despite her youth, testified clearly and calmly without a trace of histrionics or other embellishment and preserved a credible and creditable demeanor throughout her testimony, even in the face of Respondent's inappropriate efforts either to intimidate her or merely to interrupt her testimony, and probing cross-examination by Respondent's attorney. (Tr. 218-9 [Respondent muttering "lies" audibly during her testimony]; 222-230, 230-237)

In sum, on all disputes of fact between them as to Respondent's statements to and treatment of Complainant and her family, Complainant and Ocasio must be credited over Respondent. On two points only, both related to payment of rent, does Respondent appear to be more credible than Complainant: Complainant minimized her tardiness in paying the rent prior to October 1996. Although Respondent's insistence that there was a constant "rent war" between them was an incredible and rather meaningless exaggeration, the Commission finds, after considering all the evidence, that the Figueroas did pay their rent late on occasion prior to October 1996. In addition, while Complainant testified that she did not know whether she paid the reduced rent due under the final court order, it seems unlikely under all the circumstances that she would be unaware of this final reckoning with Respondent, and the Commission credits Respondent's testimony that she did not.

Thus, Complainant has proved that, in his anger over her complaints to the City, her withholding of rent, and her insistence on other repairs, Respondent repeatedly referred to her and her family as "fucking Puerto Ricans" and "fucking Mexicans," told her to go live "with the rats and roaches," and left the note taped to her door that said "Why did you rent the apartment if you cannot afford the rent? Rents are cheaper in Humboldt Park." The references to "fucking Puerto Ricans" and "fucking Mexicans" coupled on one occasion with the demand that the Figueroas go live "with the rats and roaches" are indubitably ethnic slurs and direct evidence of Respondent's creation of an ethnically hostile and offensive housing environment, in violation of the CFHO. See Reg. 420.175.

The only real question remaining is whether the note was part of that hostile environment. Complainant contends that she reasonably interpreted this to be a taunt that she should have

moved to an ethnically segregated neighborhood, and that she should live only in a neighborhood with a high Hispanic population. Respondent counters that he had no such intent and that this was merely a statement of the economic realities of the Chicago housing market: that rents in Humboldt Park are lower than in the neighborhood of the Figueroas' apartment.

The record reflects that in the 1990 census, the proportion of Humboldt Park residents who were Hispanic was over 120 percent higher than their representation in the population of the City of Chicago as a whole; and the proportion of residents of Puerto Rican ancestry in Humboldt Park (22.7 percent) was over 500 percent higher than their representation in the population of the City as a whole (4.3 percent). Not only did Complainant reasonably interpret Respondent's note to be an ethnic slur, but Respondent himself plainly intended it as such: as a manager of at least one building in Humboldt Park for many years, he was aware not only of the rent levels there, but also the ethnic composition of the neighborhood. It is striking that of all the many neighborhoods he could have mentioned in his note, Respondent named only a neighborhood that he knew to have a high concentration of the City's Puerto Rican population. Regardless of the economic accuracy of Respondent's note, the message, in the context that it was conveyed, was as a matter of fact and law, a ethnically hostile and harassing statement, and Complainant reasonably interpreted it as such.

The verbal and written ethnic slurs, considered together, created an ethnically hostile and offensive housing environment, to which Complainant was subjected because of her ancestry, in violation of Section 5-8-030(A).

However, Respondent did not violate Section 5-8-030(B) by taping the note to the Figueroas' door. Part B of Section 5-8-030 makes it unlawful for a landlord:

> [t]o publish, circulate, issue or display, or cause to be published circulated, issued or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to the sale, rental or leasing of any real property within the city of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon the . . . national origin [or] ancestry . . . of any . . . lessee or renter of such property.

As explained further in Commission Regulation 420.120, Section 5-8-030(B) is intended to outlaw notices, statements or advertisements with respect to the sale or rental of a dwelling which indicates any actual or intended preference, limitation or discrimination because of a person's membership in a protected class. Thus, for example, in Metropolitan Tenants Organization v. Looney, CCHR No. 96-H-16 (June 18, 1997), the Commission held that a landlord violated Section 5-8-030(B) by posting a sign in an apartment window indicating that the apartments available for rent in the building were for "Adults Only." That sign clearly expressed an limitation on the rental of those units based on prospective tenants' parental status, in violation of the CFHO.

In contrast, Respondent's note, while a crude racist taunt, did not express any limitation or discrimination in the rental of the apartment. This was not a statement that Respondent wanted to evict the Figueroas because of their ancestry, or that he would not rent to Puerto Ricans or others of Hispanic ancestry. Compare Sheppard v. Jacobs, CCHR No. 94-H-162 (July 16, 1997) (tenant evicted on the basis of race). Instead, the note was a racist expression of his anger that the Figueroas had made a complaint about the apartment to the City and were withholding their rent. In fact, although the Figueroas were the only Hispanic tenants in their building, there is no evidence that they encountered any objection from Respondent to becoming tenants in the first place, and the record indicates that Respondent had rented to Hispanic tenants at other properties as well. Thus the offensive note, while violative of Section 5-8-030(A), did not violate Section 5-8-030(B) under the circumstances presented here.

VI. Remedies

Under the Chicago Municipal Code, the Commission may award a prevailing Complainant the following forms of relief:

> [A]n order: . . . to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; . . . to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the Commission . . . ; to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages. . . . These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

In the present case, the Complainant seeks compensatory damages for emotional distress, punitive damages, attorneys' fees and costs. She does not seek any out-of-pocket damages. In addition, there remains pending the assessment of attorneys' fees due as a sanction on Respondent imposed by the Hearing Officer's Order dated November 16, 1997.

A. Emotional distress

Complainant has requested compensation for her emotional distress "in the amount of at least $50,000." The Commission has the authority to right to award damages for "emotional distress, humiliation, shame, embarrassment and mental anguish." Buckner v. Verbon, CCHR No. 94-H-82 (March 10, 1997), citing Madgenovski v. City of Chicago Commission on Human Relations, No. 1-94-3576 (1st District, July 26, 1996). As the Commission stated in Nash/ Demby, *supra*, at 20:

> It is well established that the amount of compensatory damages which may be awarded in a housing discrimination case is not limited to out-of-pocket losses, but includes damages for the embarrassment, humiliation and emotional distress caused by the discrimination. . . . Such damages may be inferred from the circumstances

> of the case, as well as proved by testimony. . . . Moreover, 'because of the difficulty in evaluating the emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries.' (Citations omitted.)

In general, the Commission has not awarded damages for emotional distress in excess of $10,000 unless one or more of the following factors is present:

> a. Detailed testimony revealed the specific effects of the discriminatory conduct;
> b. The conduct took place over a prolonged period of time;
> c. The effects of the mental distress were felt over a prolonged period of time;
> d. The mental distress was accompanied by physical manifestations and/or medical or psychiatric treatment;
> e. The discriminatory conduct was particularly egregious, accompanied by face to face conduct, racial or sexual epithets and/or actual malice; or
> f. The complainant was particularly vulnerable.

Nash/Demby, *supra*, at 23-24. Accord Sheppard v. Jacobs, CCHR No. 94-H-162 (July 16, 1997) (award of $50,000 for emotional distress where Complainant suffered a severe physical reaction -- permanent loss of much of her hair).

On the other hand, the Commission also observed in that case that modest damages, "typically under $5,000.00" have been awarded when one or more of the following features were present:

> a. There was negligible or merely conclusory testimony concerning mental distress;
> b. The discriminatory conduct consisted of discrete acts which took place over a brief period of time;
> c. There were no prolonged effects of the discriminatory conduct;
> d. There was no medical treatment and/or a paucity of physical symptoms;
> e. The discriminatory conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress;
> f. The complainant was not unusually fragile due to past experiences or a pre-existing condition; or
> g. The conduct involved refusal to rent, rather than harassment, or an attempt to evict or refusal to sell.

Nash/Demby, *supra*, 21-22. Cf. Fulgern v. Pence, CCHR No. 91-FHO-65-5650 (September 16, 1992) ($2000 awarded where a racially discriminatory refusal to rent caused headaches, loss of sleep, and deterioration of romantic relationship)

The amount of damages to be awarded for emotional distress is never easy to quantify. It has been observed that discrimination occurring in one's place of residence is particularly distressing because it undermines the target's ability to feel secure in his or her own home, a natural source of comfort and solace. Shontz v. Milosavljevic, CCHR No. 94-H-1 (September 17, 1997). Expert testimony is not required to establish or quantify emotional injury. E.g., Soria v. Kern, CCHR No. 95-H-13 (July 17, 1996); McDuffy v. Jarrett, CCHR No. 92-FHO-28-5778 (May 19, 1993).

On the other hand, the Commission can award damages only due to injury resulting from unlawful discrimination, and must distinguish that injury from damage arising from other factors, such as past experiences of discrimination for which the respondent bears no responsibility or injurious conduct by the respondent which is not itself unlawful. Thus, in Shontz v. Milosavljevic, *supra*, the Commission took care to distinguish the emotional distress caused by the respondent landlord's discriminatory conduct toward her black boyfriend from the distress Complainant experienced in the face of similar antipathy from her own father. The Commission has also distinguished the injury caused by a landlord's unlawful sexual harassment from the injury caused by the same landlord's conduct that, while outrageous and highly offensive, was not in fact unlawful sexual harassment. Rottman v. Spanola, CCHR No. 93-H-21 (March 20, 1996) ("[E]ven disregarding his violations of the Ordinance, Respondent was an appalling, offensive, erratic and frequently frightening landlord.")

The present case arose in the context of a landlord-tenant dispute over insufficient heat and other repairs sought by the tenant. Complainant had lived in Respondent's building for over a year without incident, until she complained in October 1996 about the inadequate heat. Up to that time, she had even been late paying the rent on occasion, apparently without distressful conduct by Respondent. The relationship deteriorated after Complainant began to complain about the lack of heat. Nonetheless, it is clear from the record that much of Respondent's angry and threatening behavior after that time was devoid of racial conduct: Respondent was angry that Complainant kept bothering him about the heat, when none of his other tenants had complained; he was angry that Complainant had involved the City; he was angry at her threat to exercise her rights under the Chicago Landlord-Tenant Rights Ordinance, and at her eventual withholding of rent.

Respondent did not violate the CFHO simply by getting angry and expressing anger over a landlord-tenant dispute. Complaint's distress from Respondent's nondiscriminatory expressions of anger, however frightening or offensive they may have been, is not compensable. However, when his anger took the form of oral and written ethnic slurs, he stepped over the line to violate the CFHO, and Complainant is entitled to recover from the distress caused when Respondent's expression of anger through ethnic slurs unlawfully created an ethnically hostile and offensive housing environment. In assessing damages, the Commission therefore has considered only the effect of Respondent's unlawful conduct.

In this case, Complainant testified that she suffered from anxiety as a result of Respondent's harassment of her and her family. According to her testimony, the anxiety began as soon as she called on October 31, 1996 to complain about the lack of heat. This is before the

ethnic slurs began and, therefore, at least a portion of her emotional distress during the period in question stems from the underlying landlord-tenant dispute itself, rather than the discriminatory conduct alone. The ethnic slurs did not begin until December 1996 when she told him that she was withholding rent because of the lack of heat. Those slurs, however, also caused or exacerbated her anxiety. Unlike the nondiscriminatory conduct, the slurs affected her self-esteem, making her feel "worthless." She had trouble sleeping. She and her husband began arguing out of frustration over their inability to end Respondent's harassment.[9]

After carefully considering the guidelines in Nash/Demby v. Sallas, awards for emotional distress made in other Commission cases, and the record in this case, the Commission finds that an award of $15,000.00 for emotional distress is appropriate. As already explained, the record demonstrates that Respondent's discriminatory conduct caused Complainant to suffer from anxiety, nervousness and low self-esteem, interfered with her sleep, and damaged her relationship with her husband. These are specific manifestations of Complainant's emotional distress. Complainant was seen by a physician on January 20, 1997, who diagnosed her as suffering from anxiety, and prescribed for her an otherwise unidentified medication that she continued to take as recently as the date of the Hearing. Although there is no evidence that the physician associated her anxiety with Respondent's unlawful conduct, Complainant's own testimony

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[9] Complainant also testified that she also was upset by the distress suffered by her daughter, who began having nightmares and bed-wetting and feared that Respondent would throw out her toys. The Commission recognizes that a parent may suffer compensable emotional distress due to the parent's distress over the impact of unlawful housing discrimination on his or her children. See Novak v. Padlan, CCHR No. 96-H-133 (November 19, 1997). In this case, the record reflects that the daughter's distress was due primarily to her fears that Respondent would evict her family, rather than to his ethnic slurs and harassment. See, e.g., Tr. 88. Therefore Complainant's distress at her own daughter's reaction is a relatively small part of her compensable emotional distress.

establishes that she suffered substantial emotional distress as a result of Respondent's violations of the CFHO.[10] However, Respondent's unlawful conduct lasted only three months -- from some time in December 1996, when Complainant told him that she was withholding rent, until some time in February 1997. Although unlawful conduct over a prolonged period may warrant an increased award of damages, this three-month period cannot be considered extraordinarily prolonged and would not on its own justify a substantial award. See Ordon v. Al-Rahman Animal Hospital, CCHR No. 92-E-139 (July 23, 1993) (Complainant was sexually harassed for over two and one-half years). Complainant testified credibly that she continued to suffer from anxiety due to Respondent's conduct at the time of the Hearing, nine months after she vacated Respondent's building, although the severity of that continuing anxiety is difficult to ascertain from this record. There is no evidence that Complainant sought any further medical attention after the doctor's visit in late January 1997. This suggests that Complainant's injury, while compensable, is not as great as the emotional injury suffered in Sheppard v. Jacobs, *supra.*[11]

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[10] Respondent objects, without any citations to the record, that this testimony was negligible or merely conclusory, and does not support an award greater than $5,000. (Objections, p. 11) Contrary to Respondent's bald assertion, Complainant's testimony was not "composed of mere conclusions," and there was no "lack of proof or consistency," as the transcript references at FOF 23 show. The Commission, based on the Hearing Officer's hearing and observing both Complainant and Respondent on the stand, credits Complainant's testimony as to the significant and prolonged emotional distress she suffered, and as late as the time of the Hearing, continued to suffer, due to Respondent's violation of the CHRO.

[11] Respondent contends that the fact that his offenses occurred within a three-month period requires that the Commission limit its award of emotional distress damages to under $5,000. (Objections pp. 11-12) However, Respondent thereby ignores the fact that the gravity, severity, and persistence of his misconduct completely outweigh what might otherwise mitigate the size of the award. An award of emotional distress must reflect the totality of the circumstances, not merely the presence or absence of a single factor in a list.

On the other hand, Respondent's conduct was face-to-face, persistent, and occurred in the very apartment building where Complainant had her home, in the context of an existing landlord-tenant relationship and at times in the presence of her young daughter and niece. The Commission has repeatedly recognized that such face-to-face conduct is particularly distressing. Nash/Demby v. Sallas, *supra.* Such blatant ethnic slurs justify substantial damages.

The circumstances here are simply not as exigent as those in Sheppard v. Jacobs, *supra*, where a tenant, awarded $50,000.00 in emotional distress damages, was evicted, sight unseen, as soon as the landlord realized that she was African-American, and as a result suffered the exquisite humiliation of prolonged, if not permanent, severe hair loss. On the other hand, the balancing of all of these factors suggests that the level of compensable emotional distress suffered by Complainant was comparable to that suffered by Complainant Demby in Nash/Demby v. Sallas, *supra* (in which Demby was awarded $15,000 after Respondent refused to rent to him due to his race) and by the Complainant in Soria v. Kern, *supra* (complainant was awarded $15,000 after Respondent refused to rent to him due to his race).[12] After considering all of these factors, and Commission awards in other cases, the Commission concludes that an award of $15,000 in emotional distress damages is appropriate here.[13]

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[12] Respondent objects that his conduct did not amount to the egregious conduct that would cause a reasonable person to experience severe emotional distress, and "wonders how such a person would function on a daily basis in our insensitive world." After careful consideration of his objection and review of the record, the Commission concludes otherwise, as set forth above.

[13] Respondent contends that compensatory damages should be limited to at most $2,500.00, asserting that this case follows the pattern of cases warranting awards less than $5000, Nash/Demby, *supra* at 21-22 (quoted above at page 19), rather than the pattern of cases warranting awards in excess of $10,000, Nash/Demby, *supra* at 23-24 (quoted above at page 19). The assessment of damages for emotional or mental distress is not an exact science, and cannot be reduced to the rote application of a list of criteria. The bottom line is that, as the foregoing discussion demonstrates, the circumstances of this case, considered overall and in light of the survey presented in Nash/Demby, support an award of $15,000 in damages for emotional distress.

B. Punitive damages

Complainant seeks an award of $50,000 in punitive damages. As the Commission has observed, "The purpose of punitive damages is to deter and punish respondents who have acted willfully, wantonly or in reckless disregard for complainants' protected rights." Buckner v. Verbon, *supra*. Accord Page v. City of Chicago, No. 1-92-1621 (1st Dist., Sep. 30, 1998); Soria v. Kern, *supra*; and Collins and Ali v. Magdenovski, CCHR No. 91-FHO-70-5655 (September 16, 1992) at 29 (upheld by unpublished Appellate Court decision No. 1-94-3567, 1st Dist., July 26, 1996). In assessing punitive damages, the Commission considers the Respondent's income and assets, any history of prior discrimination, and the nature of the discriminatory behavior itself, and the Respondent's attitude toward the Commission and its proceedings. Buckner v. Verbon, *supra*; Janicke v. Badrov, CCHR No. 93-H-46 (January 18, 1995).

Complainant urges that a substantial award of punitive damages is appropriate because Respondent's conduct was particularly egregious, because Respondent and his attorney showed blatant disregard and contempt for Commission rules and procedures, and because Respondent's net worth necessitates a sizable punitive damages award. The Commission agrees.

Notwithstanding the implications he intended by the written note, Respondent's verbal abuse of Complainant was blatantly and unambiguously racist. See FOF 10, 11, 18. There was nothing subtle or hidden about it. The outrageousness of the violation has frequently been cited as a basis for punitive damages. Soria v. Kern, *supra*; Khoshaba v. Kontalonis, CCHR No. 92-H-171 (March 16, 1994) As an experienced landlord responsible not only for his own property but also for buildings owned by others in his family, Respondent should have known of his obligation to refrain from creating an ethnically hostile environment for his tenants. He has had other

Hispanic tenants, and an award of punitive damages is essential to deter him from future violations against Hispanic tenants, and from future violations of the Ordinance in general.[14]

The disrespect and disregard for the Commission's procedures demonstrated by Respondent and his attorney, Robert Salzman, further warrant the imposition of punitive damages. Respondent repeatedly failed to respond to Complainant's request for documents, necessitating Complainant's filing of two separate Motions to Compel and causing the Hearing Officer to assess sanctions against Respondent for his non-compliance with discovery. Figueroa v. Fell, CCHR No. 97-H-5 (November 16, 1997). Even after the Hearing Officer ordered a complete response to the document request, Respondent failed to make a full response, omitting, for example, any documents concerning his ownership of certain properties in the Chicago area. See, e.g., Tr. 609-10. Thirty pages of documents were not even given to Complainant until the day of the hearing. Respondent failed to comply with the Hearing Officer's specific direction that Respondent provide an affidavit affirming the completeness of the production. Compare Order dated November 16, 1997 with Tr. 16-7. Respondent failed to provide Complainant or the Hearing Officer with any marked exhibits in advance of the Hearing, contrary to the Hearing Officer's Order. All of this materially hindered Complainant's prosecution of her claim, and

[14] Respondent objects, without citation to the record, that the record does not indicate that he now has any Hispanic tenants. That is not what this Ruling says or what the Recommendation said. He has had "many" Hispanic tenants in the past, according to his own testimony (Tr. 485). Whether he has any Hispanic tenants now, the award of punitive damages is intended to protect any present or future Hispanic tenants. The Ruling reflects the breadth of the Commission's concern, in light of the entire record, that Respondent be deterred from any future violations against any protected tenants.

multiplied the proceedings of the Commission, increasing both Complainant's and the City's costs without good cause.[15]

Respondent and his counsel were also inordinately disrespectful of the Commission's rules and proceedings in the Hearing itself. Respondent's attorney made comments out of order several times during the proceedings (see, e.g., Tr. 583-4, 598-9, 604-5).[16] Respondent himself went so far as to pronounce thirteen-year-old Tina Ocasio's testimony "lies" in the midst of her testimony. Tr. 218.[17] Going beyond the bounds of ethical and aggressive legal defense, Mr.

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[15] Respondent's objection that this failure to respond to discovery requests does not support an award of punitive damages is rejected. Respondent asserts that once Mr. Salzman entered the case, "he immediately took steps to comply" with those requests, that Respondent himself stated (at some unidentified time) that he did not understand why he was required to comply, and that once he understood, he did so. There is nothing in the record to support these assertions, nor the assertion that the failure was not wilful. Respondent never filed any objections to the discovery requests, although he was represented by counsel at all times. Respondent never complied with the November 16, 1997 Order, which, among other things, expressly required Respondent to provide all documents responsive to Complainant's Document Request No. 7 for "[a]ny and all documents relating to or identifying your net worth, including all documents relating to or identifying your income and assets for the last five years" and effectively required Respondent to submit an affidavit attesting to the completeness of his production.

[16] Respondent correctly objected that the original record citations by the Hearing Officer did not reflect any out-of-order comment made by him. He is correct; it was his attorney who was overly argumentative at Tr. 583-4, and, at Tr. 604-5, who coached his client during cross-examination in disregard of the Hearing Officer's explicit instruction not to. This Ruling reflects those corrections.

[17] Respondent complains that this does not appear in the record. However, Complainant's counsel stated, during his examination of Ms. Ocasio, at Tr. 218:

> Your Honor, I would like the record to reflect Mr. Fell, on numerous occasions, has said out loud "lies" and said – uttered under his breath in an attempt to intimidate the witnesses on the stand.

Respondent's counsel immediately interrupted, Id.:

> I will instruct. Please do not make any statement out loud whether you believe the testimony or not. Let me do that, okay? Please Richard [Respondent]. Thank you, and I hope it won't happen again.

(continued...)

Salzman repeatedly made objections that were blatant efforts to coach Respondent while he was on the stand, persisting even after warnings from the Hearing Officer. (See, e.g., Tr. 530, 531, 539, 552, 554-55, 578, 579.) He threatened opposing counsel, first, with blocking his partnership and, second, with bodily harm. (Tr. 26, 577.)[18] The threats would be laughable were they not so contemptuous of the forum in which they were made. Mr. Salzman's sneering question to Complainant, "You speak English, don't you, Ma'am?" (Tr. 247) was absolutely inexcusable.[19] (Complainant, it should be noted, was born and grew up in Chicago (Tr. 83), speaks completely

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[17] (...continued)
The Hearing Officer allowed the statement of Complainant's counsel to stand, thereby granting his request. Respondent's muttered comments, acknowledged by his own attorney, are therefore a matter of record.

[18] The transcript reflects that Mr. Salzman said: "Make sure you don't get a partnership." (Tr. 26) In fact, what Mr. Salzman said was, "I'll make sure you don't get a partnership." The official transcript is hereby corrected to reflect Mr. Salzman's complete remark, which the court reporter failed to record because Mr. Salzman was talking over both Complainant's counsel, whom he had interrupted, and the Hearing Officer, who was trying to end the interruption. (Hearing Officer, immediately following Mr. Salzman's threat: "Mr. Salzman, if you continue to interrupt, to talk over me, to talk over opposing counsel after I have told you to stop, because I know when people will start, and this is, by the way, for both – " (transcript garbled here because Mr. Salzman interrupted again)(Tr. 26)) Contrary to Respondent's objection, Mr. Salzman bluntly and explicitly threatened to prevent Complainant's counsel from reaching partnership.

[19] In his Objections, Respondent asserts that this question was merely an effort to show the Hearing Officer "[a]fter repeated nonresponsive answers from the complaining witness (see pages 105-247)" that "the Claimant's [sic] credibility was effected [sic] by her continuous refusal to either answer questions put to her or to respond, as if she understood the question like she did as on Direct Examination.[sic]" Respondent's premise is wrong: Overall, Complainant had not answered inappropriately, and had not refused to answer questions or respond. It is impossible to divine from Respondent's block cite of almost 150 pages of transcript of which answers he complains. However, it is apparent from the record, and was apparent to the Hearing Officer at the time, that Complainant merely was confused by the colloquy engendered by repeated objections, and that her requests for the repetition of questions were entirely appropriate. (Tr. 239 -247) In any case, counsel's gratuitous ethnic slur was unnecessary and inappropriate, even to point out what counsel contends was Complainant's alleged evasiveness.

fluent and unaccented English, and had merely asked for repetition of a question after an objection and ruling, when Mr. Salzman interjected his own ethnic slur.)[20]

Respondent's efforts to mislead the Hearing Officer and the Commission with respect to the admissions in his Verified Response, discussed in detail above, demonstrate a further contempt for the Commission's truth-seeking function. Respondent, through his attorney, also actively misled the Hearing Officer to excuse the untimeliness of his request for subpoenas for two nonparties, Matthew Jacobs, the owner of a boiler repair company who worked on the boiler in the Figueroas' building, and Richard Wilk, the serviceman who did the work. Respondent's attorney represented that the untimeliness should be excused because the prospective witnesses "had originally indicated that they would testify." Letter from Mr. Salzman to the Hearing Officer, November 25, 1997. The Hearing Officer relied heavily upon that representation in issuing the subpoenas. Order dated November 28, 1997. However, Mr. Wilk testified under oath that he was never contacted by either Respondent or his attorney prior to the week of the hearing (Tr. 425), and Respondent himself admitted that the only time he asked Jacobs if Mr. Wilk could testify, Jacobs told him that a subpoena would be required. (Tr, 612-3)[21]

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[20] Mr. Salzman also made non-verbal signals to Respondent while he was being cross-examined. Whether intentionally or unconsciously, Mr. Salzman repeatedly indicated answers to opposing counsel's questions by nodding his head. This was pointed out by Complainant's counsel and subsequently observed by the Hearing Officer and noted on the record. (Tr. 576-7, 578, 592, 593, 600.) However, the nodding was so slight, and the accusation so serious, that the Commission adopts the Hearing Officer's statement that she could not say with certainty that this signaling was intentional by Mr. Salzman. It was without doubt unprofessional, as was Mr. Salzman's subsequent tirade. (Tr. 598-601)

[21] Respondent objects that he never misled the Hearing Officer as to the reason for his untimely request for subpoenas. However, in his November 25, 1997, letter request for subpoenas, Respondent's attorney stated (emphasis added):

> . . . I only learned on November 20, 1997, that subpoenas for their [Jacobs' and

(continued...)

Such abuse of the Commission's processes provides additional grounds for assessing punitive damages. E.g., Nash/Demby v. Sallas, *supra*; Akangbe v. 1428 W. Fargo Condominium Assn., CCHR No. 91-FHO-18-5630 (March 25, 1992). This attitude was demonstrated by Respondent himself, but Respondent must also be held responsible for the acts of his agent, his attorney. As one federal court has observed, in sanctioning a litigant for his attorney's acts,

> A rule which would allow parties to escape the consequences for their attorney's misconduct solely on the basis of the excuse 'it was my attorney's fault' would strip the district court of much of its ability to discipline parties within their courtrooms.

Fitzsimmons v. Nolden (In re Fitzsimmons), 920 F.2d 1468, 1472 n.3 (9th Cir. 1989); see Janas v. Zuniga, CCHR No. 96-H-74 (April 9, 1997) (an attorney's negligence does not constitute good cause to vacate an order of default). Here, Respondent displayed the same attitude as his attorney towards the Commission's proceedings, and it is entirely appropriate to impute counsel's conduct to his client.[22]

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[21] (...continued)
Wilk's] appearance was necessary. This information could not have been known prior to that time because **they** had originally indicated that **they** would testify because of **their** relationship to the property and complaining witness.

In fact, "they" had indicated nothing of the sort. Neither Respondent nor his attorney bothered to contact **Wilk** until the week of December 5, 1997, so he could not have "indicated" anything to them. This was a clear effort to mislead the Hearing Officer into granting the request for subpoenas.

[22] Complainant also objects to Mr. Salzman's badgering of witnesses, his argumentative questions, misstatements of witnesses' testimony, and interruptions and arguments with opposing counsel, witnesses and the Hearing Officer. Complainant's Post-Hearing Brief, pp. 26-8. Annoying, disruptive and disrespectful as some of the cited conduct may have been, the Hearing Officer finds that it was not so outrageous as to warrant additional punitive damages beyond those being awarded here.

Complainant correctly notes the Commission's comment in Nash/Demby v. Sallas that:

> Evidence regarding a respondent's financial circumstances is peculiarly within the respondent's knowledge so he or she bears the burden of introducing such evidence into the record. If a respondent fails to produce credible evidence mitigating against the assessment of punitive dames, the penalty may be imposed without consideration of his/her circumstances.

See Miller v. Drain Experts & Derkits, CCHR No. 97-PA-29 (April 15, 1998) (same). In this case, Respondent's disclosure of his financial circumstances was much delayed, and sketchy at best. As discussed above, Complainant was forced to file two Motions to Compel to obtain the financial information requested in discovery, and even then did not receive some documents until the day of the hearing, contrary to the orders previously entered by the Hearing Officer and her directions to Respondent's counsel at the Pre-Hearing Conference. Even with this sketchy disclosure, it appears that Respondent owns at least five properties: the building in issue in this case, which produces monthly rental income of approximately $2,400; a three-lot property on 63rd Street, which includes both a restaurant with two parking lots and an apartment, for which the rental income was never disclosed; a building on North Avenue that produces monthly rental income of approximately $1,400; vacant land in LaSalle County, Illinois, and his personal residence in DuPage County, Illinois, the value of which Respondent never disclosed. (Tr. 546-7, 605-609) In addition to, or perhaps in lieu of, the rents on the Patterson Avenue building, Respondent is receiving payments of $1,200 per month on an installment sales contract by which he is selling the property, to which he still holds title. (Tr. 609) Respondent, who is single, had an average annual gross income over the period from 1994 through 1996 of roughly $90,000, according to the incomplete tax information he produced. (C. Exhs. 16-18.)[23]

[23] Respondent objects to this calculation of his adjusted gross income. However, according to the first page of his federal tax returns, all that he produced to Complainant, he reported (continued...)

Respondent single-handedly turned a tenant's routine – and, as found by the City building inspectors, justified – complaint about inadequate heat into an ugly, degrading and frightening ethnic persecution in the tenant's own home. Respondent continues to ignore the seriousness of the offense, even suggesting that his age somehow entitles him to a lighter penalty. ("The hearing officer used that alleged [financial] status to punish a man of 73 for the alleged use of a racial epithet that arose out of a rental dispute and not a dispute about nationality." Objections, p. 2) Even from the sketchy and wilfully limited information he provided, it is clear that Respondent is a man of very comfortable income and assets, the bulk of which are derived from his occupation as a owner and manager of residential and commercial real estate.[24] Thus it is of special concern to the Commission that the award of punitive damages be large enough to impress upon him the significance of the Ordinance, the rights it protects, and the Commission's power to implement and enforce it, and to deter him from any future violations.

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[23] (...continued)
adjusted gross income of $104,514.16 in 1994, $100,826.43 in 1995, and $62,361.27 in 1996, or an average of slightly under $90,000 per year. (C. Exhs. 16 -18.) Respondent complains that these figures should not be used because his rental income each year was far lower. However, Respondent failed to produce requested information from which his net worth could be determined. He failed to produce any evidence in response to requests that would have disclosed the value of any of his real estate or other fixed assets. Thus, it is entirely appropriate to include all elements of his adjusted gross income, as that term is used on federal income tax returns, in determining his financial status.

[24] Respondent objects vociferously to this characterization of his financial status, contending that these conclusions are not supported by any evidence. "There is no evidence that has been offered as to what [Respondent's] financial status is or was." (Objections p. 2) This is rather like the story about the man who murdered his parents seeking mercy from the judge because he now is an orphan. Despite the Commission's Order, Respondent failed to respond fully to discovery requests for precisely the information that Respondent claims to be missing from the record. It is his own fault that the record is as thin as it is. Nonetheless, Respondent's own testimony (Tr. 461, 546-7, 607-9) and his tax returns (C. Exhs. 16-18) support the Commission's assessment of his net worth.

Complainant requested an award of at least $50,000 in punitive damages. However, the circumstances of the offense here, the conduct of Respondent and his attorney, and Respondent's financial status, do not support such an exceptionally large award. Cf. Nash, *supra*, where a punitive damages award of $35,000 was made against a respondent who owned $1,000,000 in real estate and whose income may have been as high as $13,000 per month. On the other hand, the circumstances here warrant greater punitive damages than the $15,000 awarded in McCall v. Cook County Sheriff's Office et al., CCHR No. 92-E-122 (December 21, 1994) (where Respondents were ordered to pay $15,000 in punitive damages in a case involving sexual harassment in employment). Accordingly, for all of the reasons given, including the nature of the offense itself and the need for an effective deterrent in this case, Respondent shall be ordered to pay Complainant $35,000 in punitive damages.[25]

C. Fine

Section 5-080-130 of the Chicago Fair Housing Ordinance provides for a fine of up to $500.00 for each offense. In this case, the Commission will consider the pattern of verbal slurs over a three-month period, together with the written ethnic insult, to be a single offense, because the acts together created the unlawful environment. The offensive and blatant nature of Respondent's face-to-face slurs and Complainant's repeated disregard for the Commission's procedures and processes, warrants the imposition of the maximum fine of $500.00 against

[25] Respondent made numerous objections to the Hearing Officer's assessment of compensatory and punitive damages. Not all have not been itemized in this Decision. Where an objection has not been addressed explicitly, the Commission nonetheless has considered fully the objection and determined to adopt the Hearing Officer's recommendations.

Respondent. There is no basis to impose less than the maximum fine, in contrast to Hall v. Becovic, CCHR No. 94-H-39 (June 21, 1995), where the Commission imposed a fine of only $250.00 "[d]ue to the lack of hostile or malicious behavior and some element of confusion on [the respondent's] part." Id. at 12-13.

D. Interest

The Commission routinely awards interest on damages awards, at the prime rate, adjusted quarterly, compounded annually, starting from the date when the discrimination occurred. See, e.g., Soria v. Kern, *supra*; Janicke v. Badrov, CCHR No. 93-H-46 (January 18, 1995); CCHR Regulation 240.700. Such an award of interest is appropriate here. In this case, the violation occurred and its effects built over a three-month period. Under the circumstances, it is appropriate to measure interest from a rough mid-point of that period, or January 1, 1997.

E. Attorneys' fees

Because Complainant is the prevailing party here, the Commission has the authority to order Respondent to pay all or part of Complainant's costs including her reasonable attorney's fees. Chicago Municipal Code, §2-120-510(l) and Becovic v. City of Chicago, 296 Ill. App. 3d 236, 694 N.E.2d 1044 (1st Dist. 1998). The Commission routinely awards such fees and costs to a prevailing Complainant, and finds no reason not to do so here. See, e.g., Nash/Demby, *supra*; Huezo v. St. James Properties, CCHR No. 90-E-44 (July 11, 1991). Accordingly, the Commission awards Complainant her reasonable attorney's fees and costs.

Pursuant to Regulation 240.630, Complainant shall serve the Hearing Officer and all other parties a statement of attorney's fees and costs supported by arguments and affidavits no later than 24 days after the mailing of this Order. Accordingly, Complainant's statement of attorney's fees and costs in the instant case must be served by November 16, 1998. This statement shall also be filed with the Commission (two copies). The supporting documentation shall include the following:

1. The number of hours for which compensation is sought, itemized according to the work that was performed and the individual who performed the work;

2. The hourly rate customarily charged by each individual for whom compensation is sought, or in the case of a public law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise; and

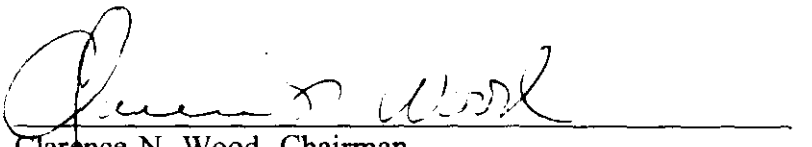
3. Documentation of costs for which the party seeks reimbursement.

All other parties shall file any responses/objections to the statement of fees within 14 days after the filing of such statement. Such responses shall be served upon the Administrative Hearing Officer, all other parties, and shall be filed with the Commission (two copies). Complainant may submit a reply brief, within ten days after filing of the response.

The Commission notes that Complainant already has been awarded her attorneys' fees and costs incurred in connection with her second Motion to Compel, pursuant to the Order dated November 16, 1997, subject to a determination of the appropriate hourly rate. The parties have fully briefed the amount of attorneys' fee due under that Order, and they are not required to duplicate those submissions in briefing the calculation of attorneys' fees for the final award.

VI. Conclusion

For the foregoing reasons, the Commission enters judgment in favor of Complainant Margie C. Figueroa and against Respondent Richard Fell in the amount of $15,000.00 for emotional distress damages and $35,000.00 in punitive damages. Interest is also awarded as set forth in Section V(D) above. In addition, Complainant shall be entitled to recover her reasonable costs and attorneys' fees to be determined as set forth in Section V(E) above. Respondent is also ordered to pay the City of Chicago a fine of $500.00 for his violation of the Chicago Fair Housing Ordinance.

By: 

Clarence N. Wood, Chairman

For: CHICAGO COMMISSION ON HUMAN RELATIONS

Date: October 21, 1998